



September 27, 2022

**VIA EMAIL**

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission of New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
22nd Floor  
Toronto, Ontario M5H 3S8  
Email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

M<sup>e</sup> Philippe Lebel  
Corporate Secretary and Executive Director  
Legal Affairs  
Autorité des marchés financiers  
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Dear Sirs/Mesdames:

**Re: CSA Consultation Paper 43-401 *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects***

TSX Inc. and TSX Venture Exchange Inc. (collectively, the “**Exchanges**” or “**we**”) welcome the opportunity to comment on CSA Consultation Paper 43-401 *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects* (the “**Consultation Paper**”) published by the Canadian Securities Administrators (“**CSA**”) on April 14, 2022. The Consultation Paper requests comments on possible updating of the disclosures required to be made to investors by mining issuers regarding material mineral projects.

**The Exchanges**

TMX is an integrated, multi-asset class exchange group. TMX’s key subsidiaries operate cash and derivatives markets for multiple asset classes, including equities and fixed income, and provide clearing facilities, data driven solutions and other services to domestic and global financial and energy markets. Toronto Stock Exchange (“**TSX**”), TSX Venture Exchange (“**TSXV**”), Alpha Exchange, The Canadian Depository for Securities, Montreal Exchange, Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited and other TMX Group companies provide listing

markets, trading markets, clearing facilities, data products and other services to the global financial community and play a central role in Canadian capital and financial markets.

TSX is a globally recognized, robust stock exchange that is a top-ranked destination for global capital. TSXV is Canada's leading global capital formation platform for growth stage companies looking to access public venture capital to facilitate their growth and is an important part of Canada's vibrant and unique capital markets continuum. Together, the Exchanges offer a robust market for initial public offerings and secondary trading of securities, including those for companies operating in the mineral extractive sector.

### **The Exchanges' Interest in this Consultation Paper**

The Exchanges have an interest in supporting and promoting clear and robust disclosure by public issuers generally and the companies listing their securities on the Exchanges, particularly. Full and thorough disclosure that can be understood by potential investors increases the depth and utility of the securities markets, and supports their role in the economy's capital formation function. This increases the attractiveness of Canada as a destination globally for investment, and supports the strength of the Canadian economy.

The securities of many companies operating in the mineral extraction industry are listed for trading on the Exchanges. The Exchanges believe that the disclosures mandated by NI 43-101 are an important contributor to the decision by investors to invest in these companies, and as the exchanges on which these securities are traded, have an interest in maintaining the high standards of disclosure that NI 43-101 currently provides, in order to protect potential investors and users of the Exchanges through a robust disclosure regime. This results in greater confidence in the securities markets and enhances the attractiveness of the Canadian markets.

### **Improvement and Modernization of NI 43-101**

The Consultation Paper seeks comments on updating the required disclosures under NI 43-101, which was first adopted in 2001. The Exchanges support the CSA in seeking comments on updating these requirements. The Exchanges view the mandated disclosures as an important contributor to the ability of the extractive sector to attract investment capital. The enhanced project-oriented disclosure provides potential investors with information that is critically important to their decisions whether to invest. Periodically reassessing whether the mandated disclosures could be improved can only lead to greater confidence by potential investors in the quality of the disclosed information and ultimately in the continued ability to attract new investment to this important economic sector.

The Exchanges commend the CSA's initiative to explore regulatory changes to the mandated disclosures. In this regard, the Exchanges are of the view that NI 43-101 and the Form are well-understood by Canadian market participants and continue to provide useful and relevant information to investors and remain well-accepted internationally as setting the standard for mineral project disclosure. Accordingly, the Exchanges believe that major changes to NI 43-101 and the Form are unnecessary. However, we note that certain enhancements may improve the readability or understandability of the disclosure, particularly by non-professionals, or may better align the disclosure or Form with the disclosure required in other jurisdictions. Our responses to specific issues raised by the Consultation Paper follow.

## **Use of Alternatives to the Form**

Question 2(a) of the Consultation Paper requests comment on whether the use of disclosure documents alternative to the Form are possible and desired. The Exchanges do not support the ability of issuers to use an alternative document to the Form. Uniformity in the disclosure format provided by the Form benefits investors by aiding comparisons between and among issuer projects. Use of an alternative document to the Form would jeopardize this benefit. Moreover, the use of alternative formats could result in lack of agreement on whether the alternative covers all of the material information required by the Form.

## **Data Verification Disclosure Requirements**

Although the current definition of data verification in section 1.1 and outlined in section 3.2 of NI 43-101 is adequate, the disclosure of data verification procedures in Item 12 of the Form could be enhanced by providing guidance in the Companion Policy as to what is expected and what should be included in the description of the steps taken by the qualified person.

## **Preliminary Economic Assessments**

Preferably, the CIM would define “preliminary economic assessment.” (“**PEA**”), given that it is the authority on mineral industry knowledge, guidelines and best practices and the CSA has adopted a number of their definitions within NI 43-101. As an alternative, the CSA might consider filling this gap by expanding the definition in NI 43-101 to provide the range of all acceptable inputs for a PEA and how they are disclosed in order to help issuers comply with the disclosure requirements.

In our opinion, an independence requirement could be added for significant changes to a PEA that is unrelated to changes to the mineral resource estimate as it would add credibility to the issuer’s disclosure. The significance threshold that would trigger this independence requirement may include a threshold for net present value, internal rate of return, capital costs, similar to the 100% or greater threshold for changes in a mineral reserve or mineral resource, as described in subparagraph 5.3(1)(c)(ii) of NI 43-101.

NI 43-101 should prohibit including by-products in cash flow models used for the economic analysis component of a PEA that have not been categorized as measured, indicated, or inferred mineral resources because in our view a PEA should only be allowed on a defined mineral resource. Furthermore, if a resource has not been calculated for a commodity, then it should not be included in the PEA.

## **Qualified Person Definition**

The definition of “Qualified Person” should be limited to engineers or geoscientists with 5 years or more of experience and should not be expanded beyond the current definition. Individuals with these credentials further legitimize the disclosure.

Although the test for independence under section 1.5 of NI 43-101 is well-understood, the CSA may want to consider providing greater guidance in the Companion Policy, such as bright line tests, for ease of comparison among disclosures. This would provide greater clarity to investors in determining whether a qualified person could have a conflict.

We do not believe disqualifying directors and officers from authoring any technical reports in circumstances where independence is not required, given that it would be challenging to comply with, particularly for junior issuers.

### **Current Personal Inspections**

Rather than adding a definition of “current personal inspection”, the CSA may want to consider adding specific requirements regarding what must be disclosed regarding the “current personal inspection”, such as the exact date(s) of the inspection and the duration of the inspection in hours or full days. It should be clear that only time physically spent on the property should be included, and not time spent getting to, or from, the property. In addition, it is our view that it is reasonable to accept reliance on the site visit of another qualified person.

Subsection 6.2(2) of NI 43-101 should not be removed. Although rarely used, it remains useful for issuers in particular situations such as where weather conditions makes it impractical to conduct an inspection. However, further guidance may assist issuers in complying with the refiling requirements.

### **Environmental/Social Disclosure and Rights of Indigenous Peoples**

We applaud the CSA soliciting feedback on what is appropriate disclosure relating to environmental and social issues and the rights of Indigenous Peoples. The Exchanges themselves, and TMX as a whole, continue to integrate environmental, social and corporate governance objectives into corporate strategy, business processes, and investment decisions. We also recognize that, as a key player in the Canadian capital markets ecosystem, we have an important role to play in the reconciliation process and in empowering Indigenous economies and communities.

The disclosure requirements under NI 43-101 relate to scientific and technical information concerning mineral exploration, development and production activities of mining issuers. As required by the Form, disclosure of technical matters regarding environmental and social issues and Indigenous Rights should be provided in a technical report. However, broader disclosure pertaining to environmental and social issues and Indigenous Rights and details of an issuer's related corporate initiatives can extend beyond the scope of these technical reports. Rather than attempt to address such disclosure and convey this information in a technical report, it may be better addressed as part of the broader discussions that are evolving amongst stakeholders regarding disclosure related to ESG and the rights of Indigenous Peoples.

We appreciate the opportunity to respond to the Consultation Paper. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,

**“Loui Anastasopoulos”**

Loui Anastasopoulos  
CEO, Toronto Stock Exchange &  
Global Head, Capital Formation